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August 22, 2023

DELIVERED VIA ECF

Honorable Valerie E. Caproni
Thurgood Marshall U.S. Courthouse
40 Foley Square, Courtroom 443
New York, NY 10007-1312

Re: *August Image, LLC and Mark Seliger v. Girard Ent. & Media LLC, et al.*
23-cv-1492(VEC); Letter in response to OSC

Your Honor:

On June 16, 2023 this Court ordered Plaintiff's counsel to "be prepared to show cause why they should not be sanctioned for contempt for failing to comply with the Court's order at Dkt. 8" at the initial pretrial conference now set for August 25, 2023. In advance of that hearing, I offer this letter and the attached affidavit for the Court's consideration on behalf of my firm.

Although both parties have violated this Court's order at Dkt. 8,^a the violation by Plaintiffs was inadvertent and I am sure the violation by Defendants was as well. As set forth in the attached Affidavit of Rachel Crowe, our clients provided us with invoices that constituted all the information it had regarding its past licenses of the photograph at issue. We understood those invoices to reflect the royalties paid and turned them over to Defendants in what we believed to be compliance with the Dkt. 8. Unfortunately, it was not until the mediation that we realized that the invoices only reflected the portion of those royalties received by Seliger. The error was an innocent one, and certainly does not reflect any intent to disobey or frustrate this Court's Order. Indeed, it would only have helped our position at mediation to have had and produced the original licenses. I therefore respectfully submit that sanctions are not warranted and request that the Court discharge the OSC.

Respectfully submitted,

By: */s/ Stephen Doniger*
Stephen Doniger, Esq.
DONIGER / BURROUGHS PC
Counsel for Plaintiffs

^a This Court's February 22, 2023 Order required that after Plaintiffs served Defendants with process including a copy of that Mediation Referral Order, which Plaintiffs did on March 28, 2023 (see Dkt. 17-18), Defendants were "directed to file a notice of appearance within 14 days of the service of process." Defendants failed to do that and on April 14, 2023 I wrote to counsel for Defendants to advise her that she was in violation of this Court's Order, which led to her filing it the following day (see Dkt. 20).